

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SEP 15 2016  
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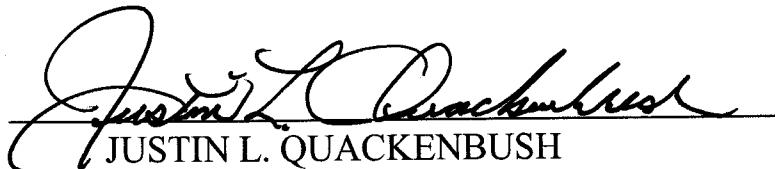
JIN ZHU, )  
Plaintiff, ) NO. CV-15-00183-JLQ  
v. )  
NORTH CENTRAL )  
EDUCATIONAL SERVICE )  
DISTRICT #171, )  
Defendant. )  
\_\_\_\_\_  
)

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INSTRUCTIONS AS GIVEN BY THE COURT

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Dated this 15<sup>th</sup> day of September, 2016.

  
JUSTIN L. QUACKENBUSH  
SENIOR UNITED STATES DISTRICT JUDGE

INSTRUCTION NO. 1

Now that you have heard the evidence, it becomes my duty to give you the instructions as to the law applicable to this case.

It is your duty to determine what facts, if any, have been established by a preponderance of the evidence as I will define that term for you. You must follow the law as I give it to you, whether you personally agree with it or not.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

The evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court.

You should consider all of the evidence introduced by both parties.

Counsels' remarks, statements and arguments are intended to help you understand their view of the evidence and apply the law. The arguments are not

INSTRUCTION NO. 1 (Continued)

evidence, however, and you should disregard any remark, statement or argument

that is not supported by the evidence or the law as given to you by the court.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine what the verdicts should be, but rather yours.

You are officers of the court and must act impartially and with an earnest desire to determine what the proper verdicts should be.

INSTRUCTION NO. 2

All parties are equal before the law and the Plaintiff, Jin Zhu, and a municipality such as an Educational Service District are entitled to the same fair and conscientious consideration by you as any party or person.

Under the law, a municipal corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. A municipal corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

INSTRUCTION NO. 3

I will give you a brief summary of the claims and positions of the parties.

Plaintiff Jin Zhu's claims:

First Claim: Mr. Zhu claims Defendant North Central Educational Service District 171 ("ESD 171") retaliated against him by not hiring him for the Math-Science Specialist position in June of 2012 on account of the race discrimination action he filed against his former employer, the Waterville School District. ESD 171 denies this alleged retaliation.

Second Claim: Mr. Zhu claims Defendant ESD 171 did not hire him for the Math-Science Specialist position in June of 2012 and for the Refurbishment Assistant position in April of 2013 on account of his national origin. ESD 171 denies these allegations.

Plaintiff Zhu has the burden of proving the claims by a preponderance of the evidence.

INSTRUCTION NO. 4

It is unlawful for a person or entity to retaliate against another person by reason of that person having filed a racial discrimination claim against any other person or entity.

To establish his First Claim of unlawful retaliation by Defendant ESD 171, Plaintiff Zhu has the burden of proving each of the following elements:

- 1) Plaintiff Zhu previously filed a claim of race discrimination against the Waterville School District; and
- 2) Plaintiff Zhu applied for a Math-Science Specialist position in 2012; and
- 3) Plaintiff Zhu was not hired for the Math-Science Specialist position; and
- 4) A substantial factor in the decision of ESD 171 to not hire Plaintiff Zhu was the fact of his prior claim of race discrimination against the Waterville School District; and
- 5) Plaintiff Zhu was damaged as a result of the alleged retaliation by ESD 171.

If you find from your consideration of all of the evidence that each of these elements has been proved by Plaintiff Zhu by a preponderance of the evidence, your verdict should be for the Plaintiff on this First Claim. If any of the elements

INSTRUCTION NO. 4 (Continued)

of this First Claim has not been proven by Plaintiff Zhu by a preponderance of the evidence, your verdict should be for the Defendant ESD 171 on this First Claim.

INSTRUCTION NO. 5

Discrimination in employment on the basis of national origin is prohibited. To establish his Second Claim, “disparate treatment claim” in his application for employment with Defendant ESD 171 for the Math-Science Specialist position and/or Refurbishment Assistant position, Plaintiff Zhu has the burden of proving each of the following elements:

- 1) Defendant ESD 171 did not hire Plaintiff Zhu for one or both of the two positions for which he applied and was qualified; and
- 2) Plaintiff Zhu’s national origin was a substantial factor in Defendant ESD 171’s decision not to hire Plaintiff Zhu; and
- 3) Plaintiff Zhu was damaged by reason of ESD 171’s alleged national origin discrimination.

If you find from your consideration of the evidence that each of the elements of the Second Claim stated above has been proved by Plaintiff Zhu by a preponderance of the evidence, your verdict should be for Plaintiff Zhu on this Second Claim. If any of the elements has not been proved by Plaintiff Zhu by a preponderance of the evidence , your verdict should be for Defendant ESD 171 on this Second Claim.

INSTRUCTION NO. 6

A “substantial factor” means a significant motivating factor in bringing about an employer’s decision. A “substantial factor” does not mean the only factor or the main factor in the challenged act or decision.

INSTRUCTION NO. 7

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a "preponderance" of the evidence, it means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

INSTRUCTION NO. 8

It is the duty of the court to instruct you about the measure of damages. By instructing on damages, the court does not mean to suggest for which party your verdict should be on any claim.

If you find Plaintiff Zhu has proven one or more of his claims, you shall award such sum as you find will reasonably and fairly compensate him for any damages that you determine were caused by the Defendant ESD 171's acts.

Plaintiff has the burden of proving damages by a preponderance of the evidence.

When determining an award, if any, you should consider the following:

1. The reasonable value, if any, of lost past earnings and fringe benefits, from the date of the wrongful conduct to the date of trial;
2. The reasonable value, if any, of lost future earnings and fringe benefits;
3. The mental and emotional pain and suffering Plaintiff may have experienced in the past and will suffer in the future.

It is for you to determine what damages, if any, have been proven. Your award must be based upon the evidence and not upon speculation or conjecture.

INSTRUCTION NO. 9

Any award for future economic damages must be for the present cash value of those damages, if any.

Present cash value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the times and in the amounts you find the damages will be incurred.

The rate of return to be applied in determining present cash value should be the income that can be expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill.

INSTRUCTION NO. 10

A claimant has a duty to use reasonable efforts to mitigate damages, if any.

To mitigate means to avoid or reduce damages.

To establish a failure to mitigate, Defendant ESD 171, has the burden of proving:

- 1) There were openings in comparable positions available for Plaintiff elsewhere after Defendant ESD 171 refused to hire him;
- 2) Plaintiff Zhu failed to use reasonable care and diligence in seeking those openings; and
- 3) The amount by which damages would have been reduced if Plaintiff Zhu had used reasonable care and diligence in seeking those openings.

You should take into account the characteristics of Plaintiff Zhu and the job market in evaluating the reasonableness of Plaintiff Zhu's efforts to mitigate damages.

If you find Defendant ESD 171 has proved all of the above, you should reduce your award of damages for wage loss by the amount of the damages resulting from the failure to mitigate.

INSTRUCTION NO. 11

In arriving at the amount of damages or compensation, if any, it is proper for you to give due consideration to each other's views, but you are not permitted to add together the different amounts representing the views of individual jurors and then divide by the total number of jurors involved. The result would be a quotient verdict, which is contrary to the law and in violation of your oaths.

INSTRUCTION NO. 12

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience. Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

INSTRUCTION NO. 13

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is proof of a chain of facts from which you could find that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

It is for you to decide whether a fact has been proved by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense, and experience.

INSTRUCTION NO. 14

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he had testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict, and the extent to which if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; an innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

INSTRUCTION NO. 15

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 16

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The parties and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the court, and reach a just verdict, regardless of the consequences.

INSTRUCTION NO. 17

Upon retiring to the jury room for your deliberations, you will select one of your number to preside over your deliberations, and who will be your speaker when you return to court. The issues submitted for your decision are to be fully and fairly discussed. Every juror shall have a chance to express himself or herself and to vote when any ballot is taken on any question.

Verdict forms have been prepared for you. You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your presiding juror fill in, date and sign the verdict form to state the verdict upon which you unanimously agree. You should then notify the Bailiff of the fact that you have reached a verdict, but not the nature of the verdict. You will then return with your verdict to the courtroom.

A verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. A verdict must be unanimous.

INSTRUCTION NO. 18

The attitude and conduct of jurors at the outset of their deliberations is of considerable importance. It is rarely productive for a juror, upon entering the jury room to make an emphatic expression of his or her opinion on the case or to announce that he or she is determined to vote for one or the other of the parties to this suit. When a juror does that at the outset, the juror's sense of pride may be aroused, and he or she may hesitate to change or recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but you are the fact finders.

Each of you must decide the case for yourself, but you should do so only after a discussion and consideration of the case with the other jurors. Remember at all times that you are not partisans. You are judges-judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 19

Whether or not you took notes during the trial of this matter, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

INSTRUCTION NO. 20

Jurors have a duty to consult with one another and to deliberate with a view to reaching a verdict. Each of you must decide the case for yourself but only after an impartial consideration of the evidence with your fellow jurors. In the course of deliberations, you should not hesitate to reexamine your own views and change your opinion if you are convinced it is erroneous. You should not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 21

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Bailiff, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question.

You will note from the oath which will be taken by the Bailiff that they too, as well as all other persons, are forbidden from communicating in any way with any member of the jury on any subject touching the merits of the case.

Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict and been returned to the courtroom with your verdict. Do not disclose any vote count in any note to the court.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JIN ZHU, )  
              )  
Plaintiff, ) NO. 15-CV-00183-JLQ  
              )  
v.           ) VERDICT  
              )  
NORTH CENTRAL )  
EDUCATIONAL SERVICE )  
DISTRICT #171, )  
              )  
Defendant. )  
              )

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We, the jury, answer the questions submitted by the court as follows:

**QUESTION 1: Do you find Plaintiff Zhu has established by a preponderance of the evidence his First Claim that Defendant ESD 171 did not hire him for the Math-Science Specialist position in retaliation for Plaintiff Zhu having previously filed a race discrimination claim against the Waterville School District?**

**ANSWER: \_\_\_\_\_ (write “Yes” or “No”)**

**If your ANSWER is Yes on the First Claim what is the amount of damages established by the Plaintiff on this First Claim?**

**ANSWER: \$ \_\_\_\_\_**

**QUESTION 2: Do you find Plaintiff Zhu has established by a preponderance of the evidence his Second Claim that Defendant ESD 171 did not hire him for the Math-Science Specialist and/or Refurbishment Assistant position because of his national origin?**

**ANSWER:** \_\_\_\_\_ (write “Yes” or “No”)

**If your ANSWER to Question 2 is “Yes,” which position or positions were the basis for your “Yes” answer?**

**Math-Science Specialist position:** \_\_\_\_\_ (write “Yes” or “No”)

**Refurbishment Assistant position:** \_\_\_\_\_ (write “Yes” or “No”)

**If your ANSWER is Yes on the Second Claim what is the amount of damages established by Plaintiff on this Second Claim?**

**ANSWER:** \$\_\_\_\_\_

**If your ANSWER is Yes on both the First and Second Claims, what amount of the damages you have found on the Second Claim are included in the damages on the First Claim?**

**ANSWER:** \$\_\_\_\_\_

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*(DIRECTION: Sign and date this verdict form and notify the bailiff you have reached a verdict, but not the nature thereof.)*

**Dated** this \_\_\_\_\_ day of September, 2016.

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PRESIDING JUROR